

### Remarks

Claims 1, 4, 6-51, 55-61 are pending before entry of this Amendment. Claim 1 has been amended to better claim Applicants invention. Claims 2, 3, 5,35, 36, 52, 53, and 54 have been canceled. Claims 1, 4, 6-34, 37-51, 57-61 are currently pending. No new matter has been added.

Pending rejections presented in the Office Action are addressed in turn below.

#### Rejections under 35 USC § 102(b)

Claims 1, 4, 6-31, 47-49, 52-54 and 57-61 have been rejected under 35 U.S.C. §102(b) as anticipated by Gibilisco et al. (USP 4,653,668). Applicant's traverse this rejection. In order for a claim to be rejected under 35 U.S.C. §102(b) it must teach each and every claimed element *either explicitly or impliedly* of Applicant's invention.

Gibilisco does not disclose a closure which is adapted to be selectively, releasably fitted to:

"the container for closing the access opening when the dispensing module is not releasably connected to the container; and the dispensing module for closing the outlet opening"

per Applicant's invention. If Gibilisco is provided with a dispensing module adapted to receive a closure which is adapted to be selectively releasable to the container, such a closure would necessarily be a screw cap as found on the pill bottle (to which the dispenser is attached). However, unfastening the closure from the dispensing module in use would also unfasten the dispensing module from the pill container. This would render the Gibilisco non-functional as such an arrangement would be likely to disassemble in use. The same holds true for other closure arrangements such as a snap fit cap in that if the dispensing module is attached to the container via snap fit, and the cap is a snap fit on the

dispensing module (in order to also fit the dispensing module), pulling the cap from the dispenser would also tend to pull the dispenser from the pill bottle.

Hence, modifying any of the embodiments of Gibilisco would not provide a functional device.

Claims 2, 5, 7-8, 10-15, 18-29, 32-33, 36, 38, and 45-52 each depend from patentable independent claim 1. For at least this reason and without acquiescing in the Action's rejections of these claims, Applicant respectfully submits that these dependent claims are also patentable and requests that these rejections be withdrawn. Applicant expressly reserves the right to argue the separate patentability of one or more of these dependent claims at a future date.

**Rejections under 35 USC § 103(a)**

Claims 50 and 51 have been rejected under 35 U.S.C. §103(a) as unpatentable by Gibilisco. Applicant's traverse this rejection. Where a reference discloses less than all of the claimed elements, an examiner may only rely on 35 U.S.C. §103(a). In an obviousness inquiry, the prior art is compared to the invention *as claimed*. In Gibilisco, "... a delivery device is attached by means of a locking closure to a storage bottle ..." (see column 9, lines 39-40) while Applicant's hand-held dispenser is releasably mountable on the bottle, without a locking closure. There would be no suggestion or motivation in Gibilisco to use a tamper-evidence structure on a locking closure as some type of key structure would be required to release the closure. Hence, there would be no suggestion or motivation to use a tamper-evident structure with Gibilisco.

Claims 32-34 and 38 have been rejected under 35 U.S.C. §103(a) as anticipated by Gibilisco in view of Scarrott et al. (USP 6,761,161). Applicant's traverse this rejection. Scarrott's device is an indicating device adapted to be

mounted to an aerosol container and is incremented when there is axial movement of the cap member relative to the base member. Gibilisco's Figures 2 and 3 and their respective descriptions are illustrative as to how the device is to be used (see column 5, lines 59-61). By placing the device of Scarrott on the storage bottle of Gibilisco, one would not produce the working device of Scarrott. Scarrott requires "... axial movements of the cap member relative to the base member ..." (see column 2, lines 33-34) to increment the device while Gibilisco's device requires the user to hold the radial dimension of the storage unit. If one were to perform both requirements of Scarrott and Gibilisco it would be impossible for the user to actuate Gibilisco's device to actually dispense a unit product. Hence, Scarrott renders Gibilisco's device non-functional. Further, as Scarrott's device is only directed at detecting an axial force applied to it, there is no teaching, motivation or suggestion as to how Scarrott could be adapted in use to detect dispensing of the predetermined number of unit products.

Claims 35, 36, and 39-46 have been rejected under 35 U.S.C. §103(a) as anticipated by Gibilisco and Scarrott in view of Kossoff et al., (USP 5,300,042). Applicant's traverse this rejection. The Office has asserted that Kossoff teaches an electronic display for the countdown dispensing indicator and an electronic switch for actuation (see Examiner's reply, page 6 line 4). However, Kossoff is directed to a mechanical indicator assembly that relies on "the rod is driven upward to engage the teeth of the ratchet wheel, thereby rotating the ratchet wheel counterclockwise and its attached reset wheel one step to display the numeral "1" " (see column 4, lines 31-34). Applicants assert that neither the mechanical rod nor mechanical counter of Kossoff suggests or motivates one skilled in the art to use an electronic countdown dispensing indicator or an electronic switch.

In view of the above, Applicants submit that amended claim 1 is novel and non-obvious over Gibilisco, alone or in combination with Scarrott and/or

Kossoff. All other pending claims are likewise novel and non-obvious by dependency from claim 1.

#### Conclusion

Applicants assert that the application in a condition for allowance, and such allowance is respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge any fees or credit any overpayment, particularly including any fees required under 37 CFR Sect 1.16 or 1.17, and any necessary extension of time fees, to deposit Account No. 07-1392. The Examiner is invited to contact the undersigned at (919) 483-9995, to discuss this case, if desired.

Respectfully submitted,

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Date: June 26, 2009  
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